

CANADA / JUDGMENT

TA8-20329

COURT

Refugee Protection Division

DECIDED

23 December 2009

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RPD File No. / N° de dossier de la SPR: TA8-20329

TA8-20363

Private Proceeding / Huis clos

Reasons and Decision ? Motifs et décision

Claimant(s)

XXXXX XXXXX

XXXXX XXXXX

Demandeur(e)(s) d'asile

Date(s) of Hearing

November 6, 2009

Date(s) de l'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

December 23, 2009

Date de la décision

Panel

Rose Andrachuk

Tribunal

Counsel for the Claimant(s)

Nkunda I. Kabateraine

Conseil(s) du / de la / des demandeur(e)(s) d'asile

Barrister and Solicitor

Tribunal Officer

N/A

Agent(e) de tribunal

Designated Representative(s)

XXXXXX XXXXX

Représentant(e)(s) désigné(e)(s)

Counsel for the Minister

N/A

Conseil du ministre

- [1] XXXXX XXXXX and her infant son, XXXXX XXXXX, alleged citizens of the People's Republic of China (China), claim refugee protection pursuant to ss 96 and 97(1) of the Immigration and Refugee Protection Act¹ (IRPA).
- [2] The adult claimant was appointed as a designated representative for her infant son.

ALLEGATIONS

- [3] The adult claimant (referred to as the claimant) alleges the following:
- [4] The claimant was deserted by her common-law partner when she was three months pregnant. The claimant could not get a birth permit from the family planning office and was ordered to have an abortion. While the claimant was in despair, her friend, XXXXX consoled her and spread the Gospel to her. The claimant began attending her friend's underground church in XXXXX 2007 and was baptized there on XXXXX, 2008. On XXXXX, 2008, the claimant received a call from her friend's husband informing her that his wife was arrested and advising her to go into hiding. The claimant hid at a friend's home. The Public Security Bureau (PSB) came to her parents' home to arrest her. The claimant and her infant son came to Canada with the aid of a smuggler. While in Canada, the claimant has learned that the pastor and two members of the church were arrested. In her Personal Information Form (PIF), the claimant only alleges persecution because of religion whereas in the hearing room and at the Citizenship and Immigration Canada (CIC) interview, while making her refugee claim, the claimant alleged that she was persecuted because she was threatened with sterilization.

DETERMINATION

- [5] I determine that the claimants are neither Convention refugees nor persons in need of protection.
- [6] In arriving at my decision, I have considered the difficulties faced by a claimant in providing testimony through an interpreter in the unfamiliar milieu of a Canadian hearing room. I have also taken into account the fact that the claimant is a 22-year-old with nine years of formal education.
- [7] I have also given serious consideration to the Chairperson's Gender Guidelines.² I find no constraint in this regard that should mitigate the findings above.

ANALYSIS

Identity

- [8] I find, on a balance of probabilities, that the claimants have failed to establish their identities as nationals of China.
- [9] The onus of establishing one's identity and providing critical identity and claim-specific documents rests with the claimant.

- [10] Section 106 of IRPA states:

The Refugee Protection Division must take into account, with respect to the credibility of the claimant, whether the claimant possesses acceptable documentation establishing his identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain documentation.

- [11] Rule 7 of IRPA states:

The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

- [12] In order to establish her identity, the claimant submitted a hukou issued on XXXXX, 2003, and a graduation certificate from grade nine, dated XXXXX, 2003. The claimant and her son allegedly came to Canada on a fraudulent Chinese passport, which she did not produce because the smuggler allegedly took it.
- [13] The claimant did not produce a Resident Identity Card (RIC). The RIC is the most important document for citizens of China, and thus has the greatest weight when determining if a claimant is a citizen of China. It is the only document with security features. The RICs are issued to all citizens of China who are 16 or older. The absence of the RIC is serious as this card contains a number of security features. Some of these features are visible to the naked eye, some can be seen under ultra violet light and some can be tested forensically. Thus great weight is attached to the RIC in determining who is a citizen of China.

- [14] In China every resident is required to obtain a RIC by the age of 18. The claimant explained that the reason she did not obtain one is that her parents refused to give her the hukou so she could obtain a RIC because they were upset that she had been living with her boyfriend from the age of 17. According to her PIF, the claimant returned to her home after she was abandoned by her boyfriend and continued to live with them until the age of 21, when she went into hiding because her underground church had been discovered. The claimant was asked why she did not obtain a RIC when she was back home and she testified that she did not get one as she did not want the PSB to know that she was at home with her child as she feared discovery by the Family Planning Committee who wanted to have her sterilized. As my finding (reported below) is that the claimant was not wanted for sterilization, I do not accept the claimant's explanation for not obtaining a RIC. The claimant had indicated in her CIC interview that she had her birth certificate in China but did not produce it for the hearing.
- [15] To prove the identity of her son, the claimant submitted a Notice of Birth from a personal health center where the son was allegedly born. The claimant had indicated in her CIC interview that this clinic had given her a certificate to identify her child. In the hearing, however, the claimant testified that she obtained the certificate in XXXXX 2009 after she was informed that she needed identity documents for her child. The claimant testified further that she did not have a birth document for her son so she asked her parents to go to her friend to ask for one from the clinic where the child was born. The date of issue of the birth document is shown as being XXXXX, 2007, whereas the true issue date according to the claimant's testimony should be XXXXX 2009. The claimant explained that she had asked the clinic to put the date of issue as being the date of the birth of her child, which is XXXXX, 2007. Country documents³ indicate that fraudulent documents are readily available in China and the claimant already has admitted to using a fraudulent passport. I find, therefore, on a balance of probabilities that the child's birth document is fraudulent. I do accept that the claimant is the natural mother of the child based on her evidence and the evident maternal bonding with the child.
- [16] The hukou the claimant submitted on its face appears genuine. The hukou, however, has no security features. As noted above, the hukou and the graduation certificate were both issued in 2003. They may be genuine. The claimant was asked if she had any proof that she was actually in China after 2003, such as employment documentation. The claimant replied that the supermarket she worked for was a private business and did not require a RIC. She had no proof that she ever actually worked at the supermarket such as an employee card or any pay slips. However, even if genuine, hukou and the graduation certificate only indicate that the claimant was in China until 2003. There is also no proof where the claimant's son was born as he is not included in her hukou.
- [17] In summary, I find, on a balance of probabilities, that the claimants have failed to establish that they are nationals of the People's Republic of China. The claimant may very well be Chinese as she used a Cantonese interpreter, and she may have been a citizen of China at

one time, but she could now be a citizen of any number of countries around the world. She could even have been living in Canada as there is no proof as to when she actually came to Canada. There is no acceptable proof as to where her infant son was born. Therefore, since I have found that the claimants have not established that they are citizens of the People's Republic of China, I cannot find that there is a serious possibility that they would be persecuted by authorities in China or be in fear of risk to their lives or to a risk of cruel and unusual treatment or punishment or in danger of being tortured.

- [18] Even if the claimants are established to be citizens of China, I further find that for the following reasons, they are not Convention refugees or persons in need of protection.
- [19] The claimant basis her refugee claim on two grounds. In her PIF, the claimant based her claim only on her fear of persecution because of religion. In the hearing, however, the claimant also raised fear of persecution based on her fear of sterilization by the Chinese authorities. The determinative issues in this claim, therefore are the credibility of the claimant's PIF narrative and oral testimony concerning her fear of sterilization and the claimant's membership in an underground church and her pursuit by agents of the PSB. The minor child's claim is based on being a family member of an underground Christian and of discrimination amounting to persecution based on being the child of an unmarried woman.

Credibility

- [20] There were many credibility issues in the claimant's testimony in regard to the circumstances of her pregnancy. The claimant made several amendments on the day of the hearing to try and rectify what are seen as problematic dates in her PIF. The claimant had indicated in her PIF that she began living with her boyfriend in 2003. In her CIC interview, the claimant had also indicated that she began living with her boyfriend in 2003 and that she lived with him for three years. That would mean that the claimant's son would have been born in 2006. The claimant amended the date to 2004, which would then accord with the birth being three years later. The claimant also changed the date of the date of separation from her boyfriend as to be 2007, instead of 2006, to accord with the child's birth which was in XXXXX 2007. The claimant also changed the date when she began working at the supermarket to 2004 from the date in the PIF which is 2005. In her CIC interview, the claimant had stated that she did not have any siblings and in her PIF, the claimant did not list any siblings although the instructions to the PIF question require the claimant to list siblings. At the hearing, the claimant made an amendment to include a sister. The claimant testified that she only discovered these errors in the PIF when she reviewed her case with her counsel and had no explanation how these errors were made. She also stated that maybe the interpreter made a mistake. I do not accept her explanation as there are four errors in dates and the claimant had testified that the PIF had been translated to her and that it was complete, true and correct. I draw a negative inference from these inconsistencies.

Pregnancy and Birth

- [21] In her PIF, the claimant omitted to list the address where she allegedly lived with her boyfriend for three years. The claimant stated that she had misunderstood the question and gave a reply that was confusing. She explained that she thought she was being asked to list addresses before she began school and not when she went to work. The instructions in the PIF are clear: to list all addresses where the claimant lived for the past 10 years. The claimant responded that she does not know why it is not there. I draw a negative omission from this significant omission in her PIF.
- [22] The claimant testified that she went into hiding after discovering that she was pregnant because the Family Planning Committee (FBC) had threatened to force her to have an abortion. In the hearing, the claimant was asked for the address of her friend of four years where she was allegedly in hiding before the birth of her son, but she could not supply it. The claimant did not indicate in her PIF narrative that she had gone into hiding to avoid an abortion. In fact, in her list of addresses in the PIF, there is no address for the place where she was allegedly hiding before the birth of her son. I draw a negative inference from this omission in the PIF.
- [23] In her CIC interview, the claimant indicated that she returned to her parents after her boyfriend left her and that they forced her to leave because she was pregnant and that she then went to live at a friend's place. She never stated that she went into hiding to avoid an abortion. The claimant was invited to comment on this statement which is inconsistent with her testimony. The claimant did not explain the inconsistency, but merely testified that she was not forced out by her parents and that she went into hiding. I draw a negative inference.
- [24] The claimant testified that she went into hiding twice, once before the birth of her son and later when her church was discovered. However, in her PIF, the claimant only indicated that she went into hiding once, in XXXXX 2008. The claimant was asked to explain this major omission from her narrative. The claimant blamed the interpreter and stated that she did not know why the interpreter left it out. I do not accept the claimant's explanation as she had testified that the PIF was translated to her and that it was complete, true and correct. As well, the claimant did not correct the information when she made her amendments at the hearing. I therefore draw a negative inference from this major omission from her PIF and find, on a balance of probabilities, that the claimant was not being forced to have an abortion. As well, the claimant has not provided any documents to corroborate her story.

Threat of Sterilization

- [25] I find that the claimant was not a credible witness in this regard. The claimant's whole narrative was structured around the fact that the PSB were seeking her because she had been an underground Christian. At the hearing, claimant indicated that she feared the Chinese authorities and the FPC in particular, because they wanted to sterilize her. However, the claimant did not indicate in her PIF that she feared sterilization. She only raised this

issue in the hearing. The claimant was asked if she had any notice or any kind of documentation that the FPC wanted to sterilize her. The claimant replied that the FPC did not provide any such documents to her or her parents because they did not know where she was. I draw a negative inference from this lack of documentation. As well, according to her testimony, the claimant stayed with her parents for a year before coming to Canada and the neighbours were aware that she and the baby were living there. Therefore, if the FPC had inquired they could have easily located her to give her notice and in fact to carry out the sterilization.

- [26] In addition, to the lack of documentation concerning the threat of forced sterilization, I have also considered the country documentary evidence in this regard. I find, on a balance of probabilities, that the claimant's subjective fear of forced sterilization is not supported by the objective situation in Guandong.
- [27] In Guandong province, the claimant's home province, the preponderance of the evidence indicates that the unwed mother will be charged a social support fee.⁴ The Guandong Family Planning Regulations, 2002, stipulate that a social compensation fee is imposed for out of plan births. The fee is substantial, but it is clearly meant to be the penalty rather than forced abortion or sterilization. In addition, no reports of specific incidents of forced sterilization in the Guandong province can be found among the sources consulted by the Research Directorate of the Immigration and Refugee Board (the Board)⁵ for the period of 2002-2005. Although there are mixed messages in these documents, it is clear that the thrust of recent decisions of the Government of China and in particular by Guandong provincial officials, is toward charging a social fee for out of plan births.⁶ I find, therefore, on a balance of probabilities, that the claimant would have not been required to be sterilized but would have been required to pay a fine.

Christian Identity in China

- [28] In her PIF narrative, the claimant had indicated that she was despondent because her boyfriend had left her and the FPC ordered her to have an abortion. She also indicated that her friend, Qing, who introduced her to Christianity, spoke to her about the inhumane policy of killing babies. Since I have found above, that the claimant was not credible in regard to her story of being forced to have an abortion, I find, therefore, on a balance of probabilities, that the story of her introduction to Christianity not to be credible.
- [29] In her CIC interview, the claimant had indicated that she had been practicing Christianity for only six months. As she indicated in her PIF that she came to Canada on September 21, 2008, that would mean that the claimant began her Christian practice in XXXXX 2008. But in her PIF, the claimant indicated that she began attending the underground church in XXXXX 2007. The claimant testified that her friend missed her when she did not show up for work for several weeks and went looking for her at her parents' house. Her parents gave her the address where she was hiding. Since the claimant herself did not know the address, it was not evident how her parents directed her to the place of hiding. The claimant testified that

her friend XXXXX spread the Gospel to her while she was pregnant and in hiding. Since I have already determined that the claimant was not in hiding, I therefore find, on a balance of probabilities, that this portion of the claimant's story is not credible and find, on a balance of probabilities that the claimant's friend did not spread the Gospel to her.

- [30] The claimant testified that when she was in hiding that she rarely went out. However, she testified subsequently that she went out every week to go to church. The claimant's explanation was that she did not understand the question as she did not know if it referred to her going out by herself or otherwise, since her friend Lin drove her. I do not accept the explanation as the question was clear and the claimant had been advised at the beginning of the hearing to indicate if a question is not clear. I therefore draw a negative inference.
- [31] The claimant was asked what her friend XXXXX told her about the church she attended. The claimant responded that she told her the difference between the patriotic church and her church. The claimant was then asked if her friend told her what kind of church it was and she replied that her friend said that it was an illegal church and that they believe in one God. The claimant was asked what else XXXXX told her about the underground church. The claimant responded that XXXXX criticized the government that forced to get an abortion. The claimant was asked two more times what else XXXXX told her about the church and the claimant only added that she told her about her philosophy of life and said that she had not told her anything else about the church. The claimant was then asked if XXXXX told her that it was a Protestant church and the claimant answered that she told her it was an underground Christian church. In her PIF, however, the claimant had indicated that the first thing the claimant told her about the church was that it was an underground Protestant church. The claimant had no explanation as to why she did not say that in her testimony after being given several opportunities to state that it was Protestant and after even being asked the direct question. I therefore draw a negative inference from this inconsistency.
- [32] In sum, because of the negative findings above, I determine, on a balance of probabilities that the claimant was not a member of an underground Christian church in China.

Christian Identity in Canada

- [33] The claimant has some knowledge of Christianity. For example, she knows about Baptism and Holy Communion. She knows the meaning of the Trinity. She did not know the story of the Good Samaritan. When asked to name some books from the New Testament she listed, as if by rote, Peter, Galatians, Philippians and Corinthians I and II. The claimant was asked what kind of books these were and she replied incorrectly that they talk about the miracles of Jesus and added that she is only familiar with the Gospels. These books are epistles or letters. The claimant was asked who wrote Philippians and Corinthians and she did not know. The correct answer is Paul. The claimant submitted into evidence a letter from Reverend XXXXX of XXXXX XXXXX Church, indicating that the claimant has been attending that church since XXXXX, 2008 and a Baptismal Certificate from the same church indicating that she was baptized at the same church on XXXXX, 2009. I give these two documents little

evidentiary weight since they cannot speak to the motivation of the claimant for participating in the church.

- [34] In the context of the findings and negative inferences noted above, and because of my findings that the claimant was not a Christian when she arrived in Canada and that she came to Canada specifically to make a refugee claim, I find, on a balance of probabilities, that the claimant is not a genuine Christian in Canada, and that any knowledge she has gained in Canada in the last year could have been gained for the purpose of making her refugee claim. Merely possessing knowledge of basic Christianity and joining a church is insufficient evidence on which to base a finding that the person is a genuine practicing Christian and in danger of persecution if required to return to China. If this were to be the case, anyone could come to Canada, join a church and learn basic teachings in time for a refugee hearing. To make a finding in this regard, the totality of the evidence must be considered.
- [35] On the basis of the cumulative findings and negative inferences noted above, I find, on a balance of probabilities, that the claim for refugee protection has not been made in "good faith". In this regard, R.P.G. Haines, the Chairman of a Refugee Status Appeal Panel, and A.G. Wong Heed, a member of the United Nations High Commission for refugees, stated in part:

If there is no good faith requirement in the sur place situation, it places in the hands of the claimant for refugee status the means of unilaterally determining the grant to him or her of refugee status.⁷

- [36] The panel cited the following from James Hathaway's *The Law of Refugee Status*:

An individual who as a stratagem deliberately manipulates circumstances to create a real chance of persecution which did not exist cannot be said to belong to this category.⁸

- [37] I have also given serious consideration to the Chairperson's Gender Guidelines. I find no constraint in this regard that should mitigate the findings above.

Summary

- [38] I have found, on a balance of probabilities, that the adult claimant has not discharged the onus of proving that she and her son are citizens of China. In the alternative, I find, on a balance of probabilities, that the adult claimant is not at risk of forced sterilization by family planning officials. I also find, on a balance of probabilities, that she was not a Christian in China and is not a genuine Christian in Canada.
- [39] On the basis of the cumulative findings and negative inferences noted above and the totality of the evidence disclosed, I find that the claimant has failed to satisfy her burden of establishing a serious possibility that she would be persecuted or that she would be personally subjected to a risk to his life or a risk of cruel and unusual punishment or a risk of torture by any authority in China.

Minor claimant

- [40] As noted above there is no reliable documentation to indicate where the minor claimant was born and therefore nothing to prove that he is a citizen of China. In the alternative, if he was born in Guandong, to an unmarried mother, as the claimant alleges, I have found above that a fine would normally be levied, although the claimant never indicated that she was required to pay a fine. Therefore, there is no proof that a fine was levied. Even if it was, I determine that the requirement to pay a fine is a law of general application and is not persecutory. It is intended to compensate the government for social costs such as education. After the fine is paid, the child could then be listed on the hukou, attend school and enjoy other social benefits. Normally a three year period is given to pay the fine. The claimant indicated that she paid a smuggler \$35,000 CAD to come to Canada. I find, therefore, on a balance of probabilities, that the claimant had resources to pay a fine. As the minor claimant would not be disadvantaged once a fine is paid, I find therefore, that there is not a serious possibility that the minor claimant would face persecution if returned to China.
- [41] Since the minor claimant's claim is tied to his mother's claim, I therefore find that his claim must also fail.

CONCLUSION

- [42] I find that that the claimants are neither Convention refugees nor persons in need of protection. The Refugee Protection Division therefore rejects their claims.

(signed)

"Rose Andrachuk"

Rose Andrachuk

Dec 23, 2009

Date

REFUGEE PROTECTION DIVISION / FAMILY PLANNING / FORCED STERILIZATION / RELIGION / RELIGION PRACTICE / HIDING / IDENTITY / IDENTITY DOCUMENTS / TRAVEL DOCUMENT / RULES / AMENDMENTS / PERSONAL INFORMATION FORM / INCONSISTENCY / LACK OF DOCUMENTARY EVIDENCE / OBJECTIVE ELEMENT / FEMALE / SON / NEGATIVE / CHINA

1 Immigration and Refugee Protection Act, S.C. 2001, c. 27.

2 Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.

3 Exhibit R/A-1, National Documentation Package, July 31, 2009, item 3.16, Response to Information Request (RIR), number CHN102486.E, June 24, 2009 and item 3.17, RIR, number CHN103134.E, June 24, 2009.

4 Exhibit R/A-1, item 5.8, Response to Information Request (RIR), number CHN100385.E, August 25, 2005 and item 5.7, RIR, number CHN103135.E, June 23, 2009.

5 Exhibit R/A-1, item 5.10, RIR, number CHN43165.E, February 21, 2005.

6 Exhibit R/A-1, item 5.8, RIR, number CHN100385.E, August 25, 2005.

7 Refugee Appeal No 2254/94 re HB Refugee Status Appeal Authority (New Zealand) September 21, 1994.

8 The Law of Refugee Status, Hathaway, James C, (Toronto: Butterworths, 1991).

RPD.15.7 (February 12, 2009)

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